



**Comptroller General  
of the United States**

Washington, D.C. 20548

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## **Decision**

**Matter of:** National Projects, Inc.

**File:** B-237212

**Date:** February 5, 1990

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Dr. D.L. McOmber, National Projects, Inc., for the protester.  
Charles T. Flachbarth, Esq., Department of the Army, for the agency.  
Barbara Timmerman, Esq., and John Brosnan, Esq., Office of General Counsel, GAO, participated in the preparation of the decision.

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### **DIGEST**

1. Protest that awardee did not meet solicitation requirement that all houses should be built facing south is denied where protester has not shown that solicitation requirement that houses be oriented within 20 degrees of south, such that a major section of the roof faces within 20 degrees of south, could reasonably be read as requiring that the front of each house must face south.
2. Protest that awardee did not meet solicitation requirement that a major section of house roof face within 20 degrees of south is denied where agency reasonably found that awardee's proposal substantially complied with the requirement and the protester was not prejudiced by the agency's acceptance of the proposal.
3. Protest that awardee's plans did not meet Uniform Federal Accessibility Standard concerning wheelchair turning space in its bathrooms for the handicapped is denied where agency architect concluded that awardee met the requirement and our review of the requirement does not provide us with any basis to question that determination.

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## DECISION

National Projects, Inc., protests the award of a contract to Hunt Building Corporation under request for proposals (RFP) No. DACA41-89-R-0563, issued by the Army Corps of Engineers for the design and construction of new family housing and the demolition of existing family housing at Fort Leavenworth, Kansas. The protester contends that the awardee's proposal should have been rejected because it does not comply with certain of the RFP's requirements.

We deny the protest.

The RFP was issued on April 18, 1989, with initial proposals due July 12. The agency received three proposals and found only two, Hunt's and the protester's, to be in the competitive range. Technical factors were point scored. Both firms submitted best and final offers (BAFOs). Hunt received a final technical score of 715 and submitted a price of \$20,243,700. National Projects received a final score of 703 and submitted a price of \$21,758,000. The agency made award to Hunt on September 1.

National Projects states that its review of the awardee's plans indicates that Hunt did not comply with either paragraph 2.1.2 of the RFP concerning the orientation of the houses or paragraph 5.1.10 concerning handicapped-adaptable units.

Paragraph 2.1.2 provides "All housing units shall be oriented within 20 degrees East or West of true South, such that a major section of roof faces within 20 degrees of South." The protester contends that because Hunt's housing units did not "face" south, its proposal did not comply with that paragraph. The agency responds that the paragraph does not require the house, itself, face south, that only a major section of the roof do so. According to the agency, the purpose of this requirement is to make accessible an area on the roof of the houses to accommodate the future installation of solar collectors. We agree with the agency's position.

The government's specifications in a solicitation must be sufficiently clear to permit competition on a common basis. Collington Assoc., B-231788, Oct. 18, 1988, 88-2 CPD ¶ 363. Where, as here, a dispute exists as to the actual meaning of a solicitation requirement, we read the solicitation as a whole and in a manner that gives effect to all provisions of the solicitation. Energy Maintenance Corp., B-223328, Aug. 27, 1986, 86-2 CPD ¶ 234.

Based upon our review of the solicitation, we conclude that the requirement is not reasonably subject to the overall, literal interpretation suggested by the protester. The protester's interpretation of the first half of the sentence setting forth the requirement, that all houses must be oriented toward the south to mean that each unit must "face" south, ignores the latter half of the sentence "such that a major section of the roof faces within 20 degrees of south." We think the second half of the sentence essentially explains the first half in greater detail. While the requirement could have been stated more clearly, we do not think it is subject to more than one reasonable interpretation. In our view, a housing unit would meet this standard if a major section of its roof faces within 20 degrees of south whether or not the unit itself faced south.

In its report to our Office, however, the agency stated that because of inherent limitations placed on construction by the natural characteristics of the housing sites, neither Hunt nor the protester met the requirement that a major section of the roof face south in every instance but, since both offerors substantially complied with the requirement, both proposals were deemed adequate to meet the Army's needs and thus were considered to be technically acceptable. In this regard, the agency points out that it downgraded Hunt's proposal because that firm substantially, rather than totally, complied.

National Projects asserts that the agency should not have accepted Hunt's proposal since, even under the agency's interpretation of the southern orientation requirement, Hunt's proposal was not in total compliance. National Projects further maintains that the acceptance of the noncompliant proposal was prejudicial to it because, although it received five more points for the orientation of the houses than did Hunt, the awardee was able to score higher under other related evaluation subfactors because Hunt did not adhere to the orientation requirement as strictly as National Projects.

We see nothing objectionable in the agency's determination that both Hunt's and the protester's proposals, while not in total compliance, did substantially comply with the requirement and that this substantial compliance met their minimum needs. Further, as will be explained in more detail below, there is no evidence in the record that the protester was prejudiced by the agency's acceptance of the proposals. See Management Sys. Designers, Inc., B-219601, Nov. 13, 1985, 85-2 CPD ¶ 546.

The RFP provided that proposals would be evaluated in four major areas: housing unit design, site design, dwelling unit engineering and site engineering. Solar orientation was one of several factors evaluated under site design. The two firm's scores in each area were:

	<u>Hunt</u>	<u>Nat'l Projects</u>
Housing Unit Design	345	349
Site Design	225	217
Dwelling Unit Engineering	74	68
Site Engineering	71	69

Our review of the record indicates that even accepting National Project's assertions concerning the evaluation of the two proposals in the site design area, which includes the subfactor site utilization and development under which solar orientation was scored, it would not likely have received the award since its overall score would still be lower and its price was over \$1 million higher than Hunt's.

In the overall area of site design, the protester scored eight points lower than Hunt. The area consists of seven subfactors: site utilization and development, site interpretation, vehicular circulation, parking, pedestrian circulation, recreation areas and landscaping. The protester, while asserting that solar orientation affected many of these subfactors, has not specifically identified which subfactors it thinks were affected. Our review of the subfactors indicates that at most, six of the seven might have been impacted to an unknown degree by the solar orientation of the houses.

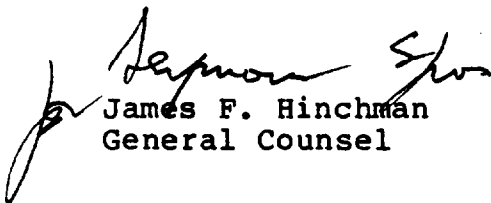
If we add points to the protester's scores for those subfactors where the awardee scored higher than the protester so that their scores are equal, this would, in our view, eliminate the awardee's alleged advantage of having some of its units fail to meet the orientation requirement. This would raise the protester's overall site design score from 217 to 228. Hunt's score for that area was 225. The protester's total score for all four of the major areas would, as a result, be raised from 703 to 714. Hunt's final score is 715. Therefore, giving the protester the benefit of the doubt on all site design subfactors, where it was impossible to calculate the exact impact of the solar orientation requirement, still leaves Hunt one point higher and \$1 million lower in price. We consequently cannot conclude that National Projects was harmed by Hunt having a higher percentage of houses than the protester that did not comply with the orientation requirement. We therefore will not disturb the award on this basis.

National Projects also contends that the plans Hunt submitted with its proposal do not comply with paragraph 5.1.10 of the RFP, which requires that some of the housing units be handicapped-adaptable and comply with the latest edition of the Uniform Federal Accessibility Standards in regard to needed space for wheelchair movement, space within a bathroom, door width, entrance areas, wall reinforcement to receive grab bars, etc. The protester initially challenged the awardee's compliance with entrance access, wheelchair movement space and bathroom space requirements. Since the agency addressed each objection in its report and the protester, in its comments, only disputed the last requirement concerning bathroom space, we consider the first two matters to have been abandoned by the protester. North Country Assocs. II, B-231643; B-231643.2, Oct. 6, 1988, 88-2 CPD ¶ 330.

With respect to bathroom space, the protester complains that Hunt's plans do not show that it meets Federal Accessibility Standard 4.2.3 for wheelchair turning space which requires either a clear turning area of 60 inches or a T-shaped area.

The agency has submitted the affidavit of an architect who reviewed the handicapped adaptability design of the proposals. The architect states that Hunt's plans, including the bathrooms, met the requirements for handicapped adaptability. The architect states that section 4.2.3 referred to by the protester does not apply to bathrooms, since that section is only a general requirement, while the more specific requirements for clear space in bathrooms is contained in section 4.34.5, which requires less than a 60 inch clear turning area. We have reviewed the Uniform Federal Accessibility Standards cited and find no basis to disagree with the architect's conclusion.

The protest is denied.

  
James F. Hinchman  
General Counsel